



BILLING CODE: 4510-FW-P

## **DEPARTMENT OF LABOR**

### **Employment and Training Administration**

#### **Allocating Grants to States for Reemployment Services and Eligibility Assessments (RESEA) in Accordance with Title III, Section 306 of the Social Security Act (SSA)**

**AGENCY:** Office of Unemployment Insurance (OUI), Employment and Training Administration (ETA), Department of Labor (DOL).

**ACTION:** Notice.

**SUMMARY:** The Bipartisan Budget Act of 2018 (BBA), Pub. L. 115-123 (2018), established permanent authorization for the RESEA program by enacting section 306 of title III, (SSA). This notice announces the formula to allocate base funds for the RESEA program, as provided under Section 306(f)(1), SSA, 42 U.S.C. 506(f)(1).

On April 4, 2019, ETA published a notice in the **Federal Register** (84 FR 13319) requesting public comment concerning the development of a proposed formula that ETA will use to distribute funding to States for RESEA. The notice presented a description of a proposed allocation formula and public comments were requested. The comment period closed on May 6, 2019. This notice summarizes and responds to the comments received and publishes the final allocation formula that will take effect in Fiscal Year (FY) 2021.

**DATES:** The RESEA allocation formula described in this notice will take effect in FY 2021.

**ADDRESSES:** Questions about this notice may be submitted to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue, NW, Room S-4524, Washington, DC 20210, Attention: Lawrence Burns, or by email at [DOL-ETA-UI-FRN@dol.gov](mailto:DOL-ETA-UI-FRN@dol.gov).

**FOR FURTHER INFORMATION CONTACT:** Lawrence Burns, Division of Unemployment Insurance Operations, at 202-693-3141 (this is not a toll-free number), TTY 1-877-889-5627, or by email at [Burns.Lawrence@dol.gov](mailto:Burns.Lawrence@dol.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

Since 2005, DOL and participating State workforce agencies have been addressing individual reemployment needs of Unemployment Insurance (UI) claimants and working to prevent and detect UI improper payments through the voluntary UI Reemployment and Eligibility Assessment (REA) program and, beginning in FY 2015, through the voluntary RESEA program.

On February 9, 2018, the President signed the BBA, which included amendments to the SSA creating a permanent authorization for the RESEA program. The RESEA provisions are contained in section 30206 of the BBA, enacting new section 306 of the SSA. 42 U.S.C. § 506. Section 306, SSA also contains provisions for funding the RESEA program.

The primary goals of the RESEA program are to: improve employment outcomes for individuals that receive unemployment compensation (UC) by reducing average duration of receipt of UC through employment; strengthen program integrity and reduce improper payments; promote alignment with the broader vision of the Workforce

Innovation and Opportunity Act through increased program integration and service delivery for job seekers; and establish RESEA as an entry point to other workforce system partner programs for individuals receiving UC. Core services that must be provided to RESEA participants are:

- UI eligibility assessment, including review of work search activities, and referral to adjudication, as appropriate, if an issue or potential issue is identified;
- Labor market and career information that address the claimant's specific needs;
- Enrollment in Wagner-Peyser Act funded Employment Services;
- Support to the claimant to develop and implement an individual reemployment plan; and
- Information regarding, and access to, American Job Center services and providing referrals to reemployment services and training, as appropriate, to support the claimant's return to work.

## **II. Background**

Section 306, SSA, specifies three uses for amounts appropriated for the RESEA program and designates the proportion of annual appropriations to be assigned to these uses: 1) base funding (84 percent to 89 percent of the appropriation depending on the year) for States to operate the RESEA program, 2) outcome payments (10 percent to 15 percent of the appropriation depending on the year) designed to reward States meeting or exceeding certain criteria, and 3) up to one percent for the Secretary of Labor to use for research and technical assistance to States. 42 U.S.C. § 506(f). With respect to the base funding, section 306(f)(1)(A), SSA, states:

IN GENERAL.— For each fiscal year after fiscal year 2020, the Secretary shall allocate a percentage equal to the base funding percentage<sup>1</sup> for such fiscal year of the funds made available for grants under this section among the States awarded such a grant for such fiscal year using a formula prescribed by the Secretary based on the rate of insured unemployment (as defined in section 203(e)(1) of the federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note)) in the State for a period to be determined by the Secretary. In developing such formula with respect to a State, the Secretary shall consider the importance of avoiding sharp reductions in grant funding to a State over time. 42 U.S.C § 506(f)(1)(A).

### **III. Response to Public Comment**

ETA received a total of 19 comments from 14 commenters concerning the RESEA base allocation formula. These comments include: 6 comments regarding the general formula, 3 comments concerning carry-over provisions, 4 comments concerning the proposed hold-harmless provision, 3 comments concerning the establishment of minimum funding levels, and 3 comments concerning administrative and other program cost limits. The following is a summary of these comments and ETA's responses.

#### **A. General Formula Comments**

Several commenters addressed formula design directly, including general concern expressed by multiple states that provisions must be made to ensure adequate funding levels for small and rural states. Members of the Committee on Ways and Means, U.S. House of Representatives, expressed concern that the proposed formula used elements that eliminated the Insured Unemployment Rate (IUR) rather than relied on the IUR as required in section 306(f), SSA. 42 U.S.C § 506(f)(1)(A). Two States suggested considering additional factors, such as costs per RESEA and program and performance

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<sup>1</sup> The term “base funding percentage” as used here is a percentage of the funds appropriated for RESEA grants to operate the program in a fiscal year. Section 306(f)(1)(B), SSA, defines the base funding percentage for fiscal years 2021 through 2026 as 89 percent and for fiscal years after 2026 as 84 percent.

data. One State recommended the use of statistically-adjusted unemployment data over a 10-year period, with an emphasis on more recent data, in place of the IUR as a means of providing more stable funding levels. One State expressed support for the proposed formula allocation methodology, but recommended revisiting the formula if future legislation expanded program eligibility to additional populations. One State recommended ETA reserve a portion of RESEA funds to respond to sudden economic changes or other unforeseen circumstances that would require a one-time influx of additional funding.

In response to these comments, as discussed more fully below, ETA has developed a revised allocation formula that uses two primary input variables: the IUR and the civilian labor force (CLF). These two factors are included in the formula because section 306, SSA, requires the formula to be based on the IUR and the CLF addresses the differences in state size. 42 U.S.C. 506(f)(1). It also includes additional provisions, discussed below, that are intended to prevent significant State funding fluctuations over time and to provide minimum funding for smaller or rural States. The use of additional data factors, such as cost per RESEA, were considered, but not included because of the increased burden of collecting and maintaining this data and the risk of creating additional funding fluctuations as States change their program design from year to year. The RESEA legislation does not authorize ETA to maintain a RESEA funding reserve. The final allocation formula is described below.

#### **B. Carry-Over Provisions Comments**

Three States commented on the proposed 25 percent carry-over limit, expressing preference to have it increased to 30 or 35 percent, or eliminated altogether. States also

suggested that the formula should allow for a higher carry-over limit upon special request by a State. In response to these comments, ETA has increased the carry-over limit to 30 percent. This change ensures the majority of funds continue to be used to provide RESEA services in a timely manner while also providing States with additional flexibility to support program costs that may span across years, such as contractual costs.

### **C. Hold-Harmless Provision Comments**

ETA received four comments from four commenters on the proposed five percent hold-harmless provision. Two comments expressed concern that the hold-harmless provision would not be applied in the initial distribution under the allocation formula. One commenter expressed concern that a fixed hold-harmless provision would negatively impact States with a stable IUR. The final comment recommended a gradual, tiered-approach to implementing the hold-harmless provision that would increase the hold-harmless rate over several years until it is fully implemented at the maximum five percent level.

In response to these comments, ETA incorporated the recommended gradual, phased implementation strategy in which the maximum potential reduction increases from 3 to 5 percent over a 3-year period. This phased implementation results in a longer transition period for states that may face reductions resulting from the new allocation formula to adjust their program design and will help prevent significant disruptions in service delivery. ETA is also clarifying that the hold-harmless provision will be applied during the initial formula allocation of funds in FY 2021 and each State, after applying the hold-harmless provision, will receive a FY 2021 allotment that is no less than an amount equal to at least 97 percent of its FY 2020 maximum RESEA grant award. Each

State's FY 2020 maximum RESEA grant award will be provided in forthcoming FY 2020 RESEA operating guidance.

#### **D. Minimum Funding Level Comments**

Three States provided comments pertaining to the absence of a minimum funding level for rural and less populated States. Two States provided comments recommending inclusion of a minimum funding level and a third State expressed concern that an additional "leveling factor" beyond the hold-harmless provision must be included to further protect small States from potential funding fluctuations associated with changes in the IUR. In response to these comments, ETA has incorporated a minimum funding level into the allocation formula as described below. The inclusion of a minimum funding level will allow all states, regardless of size, population density, or economic conditions, to implement or maintain an RESEA program.

#### **E. Administrative Costs and Other Funding Limitations.**

Three States provided comments on RESEA requirements that are not related to the formula allocation. One State submitted a comment recommending greater flexibility in administrative cost limits to support alternative approaches to grant management, such as the use of cost allocation plans. One State commented that all limits on RESEA funds should be removed to provide States with maximum flexibility in determining how to administer the RESEA program. A third State recommended providing States that are pursuing program automation with additional program administration resources. Because none of these comments are related to the proposed formula allocation methodology, ETA made no changes to the proposed formula allocation.

#### **IV. Description of Base Allocation Formula**

The final base allocation formula has been modified in response to the public comments. The new formula uses two primary input variables: the IUR and the CLF. Under this formula, each State's average IUR for the 12 months ending June 30 will be divided by the national average IUR. The two resulting ratios will be multiplied together, producing a combined IUR-CLF weighting factor. A State's allotment of the available RESEA funding will reflect the proportion of its State-specific combined weighting factor compared to the sum of all States combined weighting factors. Use of the IUR ensures that States with high IURs, and hence greater unemployment, receive a higher proportion of RESEA funds. Use of the CLF as a factor controls for State size.

## **V. Description of the Hold-Harmless Provision**

The statutory language requires the Secretary to consider the importance of avoiding sharp reductions in grant funding to a state over time. 42 U.S.C § 506(f)(1)(A). To satisfy this requirement, DOL will incorporate a phased hold-harmless provision as follows:

- (1) In FY 2021, each State will receive no less than an amount equal to at least 97 percent of its FY 2020 maximum grant award;
- (2) In FY 2022, each State will receive no less than an amount equal to at least 96 percent of its FY 2021 allotment;
- (3) In FY 2023 and subsequent years, each State will receive no less than an amount equal to at least 95 percent of its previous year's allotment.

## **VI. Minimum Funding Provisions**

No State will receive an amount equal to less than 0.28 percent of the total available funding for FY2021 RESEA's base funding level. This approach mirrors the minimum

funding provisions in the Wagner-Peyser Act (29 U.S.C. 49e) and acknowledges that all States have certain fixed costs to administer the program.

## **VII. Carry-Over Threshold**

If a State has a balance of up to 30 percent of its previous year's award, the State may carry that amount over from one year to the next. However, a State agency carrying over an amount in excess of 30 percent will have any amount in excess of the 30 percent reduced from its subsequent year's allocation, and the resulting additional resources will be included in the distribution to States that are under the 30 percent threshold. This provision is intended to ensure States are using the majority of funds to provide reemployment services to claimants in the year for which it is allocated and provide States with flexibility to support costs and activities that may span across years.

## **VIII. Conclusion**

The RESEA funding formula articulated in this notice will be utilized beginning in FY 2021. It is ETA's intent to provide States with funding planning targets annually in advance of the actual guidance and allocation.

John Pallasch,  
Assistant Secretary for Employment and Training, Labor.  
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